IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2340 of 1988

For Approval and Signature:

HON'BLE MR.JUSTICE D.H.WAGHELA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

B D VASAVA SINCE DECD. THRO HEIRS & L.RS.

Appearance:

1. Special Civil Application No. 2340 of 1988

MR HARDIK C RAWAL for Petitioner No. 1

..... for Respondent No. 1

MR MUKESH H RATHOD for Respondent No. 1/1

MR NIRDOSH H RATHOD for Respondent No. 1/1-1/4-1/4

CORAM : HON'BLE MR.JUSTICE D.H.WAGHELA

Date of decision: 29/03/2004

ORAL JUDGEMENT

#. By this petition under Article 227 of the

Constitution, the petitioner-Corporation has challenged the award of the Labour Court, Surat, by which the respondent is awarded reinstatement with full backwages.

#. There is no dispute about the fact that the petitioner was dismissed for misconduct on 16th April, 1974 and after appreciation of evidence before it, the Labour Court has set aside that dismissal. It was, however, pointed out that undisputedly the dispute raised by the respondent was referred as late as in 1979 and no explanation for not raising the dispute immediately has come on record. Even before admission of this petition, the respondent was reinstated in service and by way of interim relief, the award of the backwages was stayed with a direction to deposit 50% of the backwages in the Labour Court and that amount was also permitted to be withdrawn by the respondent subject to filing of an undertaking. After such order dated 23rd January, 1989, the respondent is stated to have passed away on 10th May, 1996. Therefore, the issue which remains is with regard to the award of backwages.

#. In view of the fact that the Reference of the dispute was delayed for the reasons which are not stated and the litigation in the Labour Court lasted for 12 years, the Labour Court ought to have applied its mind in awarding full backwages for the entire period. The delay in raising of the dispute and in adjudication of the Reference would have, in the facts of the case, been attributed to both the parties. In the absence of any cogent and concrete material regarding the intervening period of 12 years and in the above facts and circumstances, it would be fair and reasonable to hold that the respondent was entitled only to 50% of the backwages and modify the impugned award accordingly. The learned counsel for the petitioner fairly stated that the amount of 50% of the backwages already deposited in the Labour Court is withdrawn by the respondent and other retiral benefits will also be paid to the heirs of the respondent, if they are due and as yet not paid. The petition is, therefore, partly allowed. The impugned award of the Labour Court, Surat, in Reference (LCS) No. 345 of 1978 shall stand modified to the extend that the respondent shall be entitled to 50% of the backwages. Rule is made absolute accordingly with no order as to costs.

[D.H. WAGHELA, J.]
pirzada/-